

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

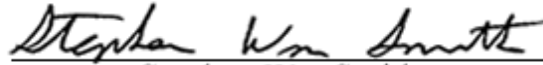
HOUSTON CASUALTY COMPANY,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-05-1804
	§	
LEXINGTON INSURANCE COMPANY,	§	
<i>Defendant.</i>	§	

MEMORANDUM AND RECOMMENDATION

This court issued a memorandum and recommendation granting summary judgment on Houston Casualty's breach of contract claim. The district court adopted this court's memorandum and recommendation, granted summary judgment on the breach of contract claim, and overruled Lexington's objections to the memorandum and recommendation. Lexington has now filed a motion for a permissive interlocutory appeal under 28 U.S.C. § 1292(b). (Dkt. 36). That statute allows an interlocutory appeal from a non-final order when the order involves a controlling question of law as to which there is substantial ground for difference of opinion, and when immediate appeal may materially advance the outcome of the litigation. Neither of these conditions are satisfied here. Accordingly, this court recommends that Lexington's motion for a permissive interlocutory appeal be denied.

The parties have ten days from service of this Memorandum and Recommendation to file written objections. Failure to file timely objections will preclude appellate review of factual findings or legal conclusions, except for plain error. *See* FED. R. CIV. P. 72.

Signed on August 3, 2006, at Houston, Texas.



Stephen Wm Smith
United States Magistrate Judge